

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BETTY MCLANEY,

Plaintiff,

v.

OUTBACK STEAKHOUSE OF
FLORIDA, LLC,

Defendant.

Civil Action
File No.:

PETITION FOR REMOVAL

TO: The Honorable Judges of the United States District Court for the
Northern District of Georgia, Atlanta Division:

COMES NOW, Outback Steakhouse of Florida, LLC, by and through its
undersigned counsel, and hereby files its Petition for Removal and respectfully shows
this Court the following:

1. A civil action has been filed and is now pending in the State Court of Fulton
County, State of Georgia, designated as Civil Action File No. 18EV006107.
2. The Summons and Complaint in that action were filed in the State Court of
Fulton County on December 18, 2018, and were first received by Defendant
Outback Steakhouse of Florida, LLC when it was substituted as a party on
January 22, 2019 and acknowledged service on January 28, 2019. [See

Exhibits C, D) Thus, Outback Steakhouse of Florida, LLC. timely files this petition of removal.

3. Outback Steakhouse of Florida, LLC files herewith a copy of all process, pleading, and orders including the Complaint, Summons, Answer, Motion and Order Substituting Parties, and Acknowledgement of Service in this action, pursuant to 28 USC § 1446. [Attached as Exhibits A-E].
4. Defendant Outback Steakhouse of Florida, LLC is now, and was at all times relevant, a corporation organized and existing under the laws of Florida and having its principal place of business in Florida. Therefore, it is considered a citizen of Florida for purposes of evaluating if complete diversity of the parties exists.
5. The sole member of Outback Steakhouse of Florida, LLC is OSI Restaurant Partners, LLC, which is incorporated in Delaware with its principle place of business in Florida. The sole member of OSI Restaurant Partners, LLC is OSI Hold Co, Inc., and it is incorporated in Delaware with its principle place of business in Florida. Therefore, Outback Steakhouse of Florida, LLC is considered to be a citizen of Florida and Delaware for purposes of evaluating diversity jurisdiction.
6. Plaintiff is a citizen of the State of Georgia.

7. Accordingly, there is complete diversity among the parties because the Plaintiff is a citizen of Georgia, and Outback Steakhouse of Florida, LLC is considered a citizen of Delaware and Florida.
8. The action described above is a civil action with a claim of which this Court has original jurisdiction, and it is one that may be removed to this Court by Defendant pursuant to the provisions of 28 USC §§ 1332 and 1441 et seq., in that there is complete diversity among the parties and Defendant is not a resident of the State of Georgia, the Parties are not residents of the same State, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

“When the complaint does not claim a specific amount of damages, removal from state court is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement. If the jurisdictional amount is not facially apparent from the complaint, the court should look to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed.” *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001) A Defendant seeking removal must prove by a preponderance of the evidence that the amount in controversy more likely than not exceeds the \$75,000.00 jurisdictional amount. *Standridge v. Wal-Mart Stores, Inc.*, 945 F. Supp. 252, 256 (N.D. Ga. 1996). When deciding whether the amount in controversy has been

satisfied, the District Court can use its judicial experience and common sense. *Roe v. Michelin North America, Inc.*, 613 F. 3d. 1058, 1064 (11th Cir. 2010).

Here, Plaintiff alleges she suffered serious injuries to her body, “including but not limited to injury to her left knee and elbow.” (Exhibit A, ¶ 34). She also alleges that her past medical expenses are “in excess of \$17,164.00.” (Exhibit A, ¶ 34). Plaintiff also makes a claim for damages for her past, present and future “injuries and pain and suffering, mental, physical, and emotional.” (Exhibit A, p. 10). While Plaintiff has never submitted a formal demand letter, common sense and experience with personal injury cases is sufficient for the court to find a Plaintiff who has injuries to multiple parts of her body and alleges future necessary medical care, asserts a claim where more than \$75,000.00 is at issue. Further, Plaintiff claims past and future physical, emotional, and mental pain and suffering damages will be sought at trial. When considered with the past and future medical costs, it is clear that the amount in controversy exceeds \$75,000.00.

9. Defendant attaches hereto a copy of the Complaint, Summons, and Acknowledgement of service in the State Court of Fulton County, Georgia. [Exhibits A-C].
10. Defendant attaches hereto a copy of Defendant’s Notice of Removal filed in the State Court of Fulton County, Georgia. [Exhibit F].

11. This action is currently pending in the State Court of Fulton County, Georgia, which is within the jurisdiction of the Northern District of Georgia, Atlanta Division. 28 U.S.C.A. § 1446(a).
12. All Defendants who have been served consent to this removal.

WHEREFORE the Defendant prays the above action now pending before the State Court of Fulton County, Georgia, be removed to this Court.

This 28th day of January, 2019.

Goodman McGuffey LLP
Attorneys for Outback Steakhouse of Florida, LLC

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CERTIFICATE OF SERVICE

This is to certify that I electronically filed this **Petition for Removal** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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This 29th day of January, 2019.

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